

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PERSONALIZED USER MODEL, L.L.P.,)
)
 Plaintiff,)
)
 v.)
)
 GOOGLE INC.,)
)
 Defendant.)
 _____)
 GOOGLE, INC.)
)
 Counterclaimant,)
)
 v.)
)
 PERSONALIZED USER MODEL, LLP and)
 YOCHAI KONIG)
)
 Counterdefendants.)

C.A. No. 09-525-LPS

JURY TRIAL DEMANDED

**GOOGLE'S OBJECTION TO DR. PAZZANI'S DEMONSTRATIVES AND
TESTIMONY COMPARING THE ACCUSED PRODUCTS TO THE FIGURE 2
EMBODIMENT FROM THE ASSERTED PATENTS' SPECIFICATION**

OF COUNSEL:

Charles K. Verhoeven
David A. Perlson
Antonio R. Sistos
Margaret Pirnie Kammerud
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
50 California St.
San Francisco, CA 94111
Tel.: (415) 875-6600

Joshua Lee Sohn
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
777 6th Street NW, 11th Floor
Washington, DC 20001-3706
Tel: (202) 538-8000

Andrea Pallios Roberts
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065
Tel.: (650) 801-5000

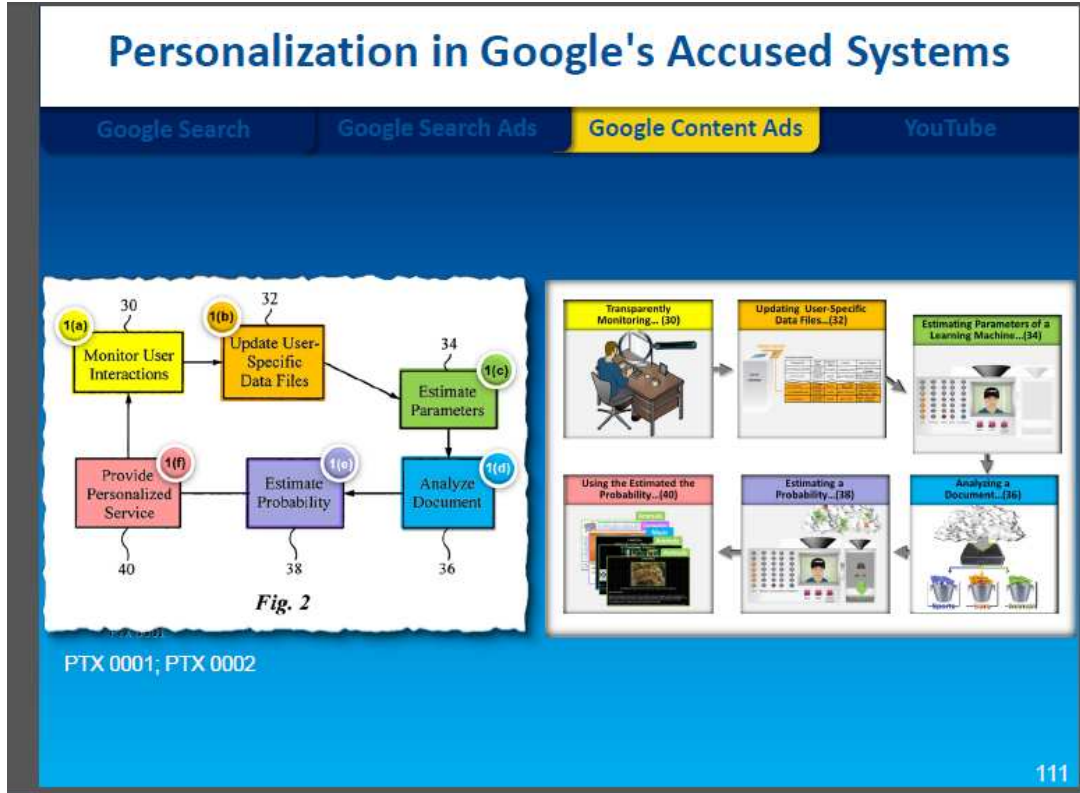
Dated: March 11, 2014

Richard L. Horwitz (#2246)
David E. Moore (#3983)
Bindu A. Palapura (#5370)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
rhorwitz@potteranderson.com
dmoore@potteranderson.com
bpalapura@potteranderson.com

*Attorneys for Defendant and Counterclaimant
Google Inc.*

Google respectfully objects to demonstratives and testimony from PUM's infringement expert, Dr. Pazzani, that compare the accused products to an embodiment in the Asserted Patents' specification. "Infringement, literal or by equivalence, is determined by comparing an accused product not with a preferred embodiment described in the specification, or with a commercialized embodiment of the patentee, but with the properly and previously construed claims in suit." *SRI Intern. v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc) (emphasis added). Dr. Pazzani repeatedly violates this rule, by comparing Google's accused products to Figure 2 from the Asserted Patents' specification. Figure 2 is the central roadmap for his infringement opinions, as he walks through the elements of Figure 2 to show why Google allegedly infringes. This product-to-specification analysis is improper under Federal Circuit law. It is thus irrelevant under Rule 402 (because it cannot actually show infringement) and highly prejudicial under Rule 403 (because it will mislead the jury as to what the infringement inquiry actually requires). It should be precluded.

For example, demonstrative 111 (below) summarizes Dr. Pazzani's comparison of Google Content Ads to the Figure 2 flowchart. Demonstratives 72 through 110 provide the discussion of Google's accused products that culminates in the above-shown Demonstrative 111. The actual claims are not discussed once in these thirty-nine demonstratives. Rather than comparing Google's products to the claims, Dr. Pazzani walks through the flowchart in Figure 2 and purports to show why Google meets each element in that flowchart.



Even in later demonstratives, when Dr. Pazzani does purport to compare the accused products to the claim elements, he often refers to the claim elements by the language in Figure 2 instead of the language in the claims themselves. For example, '040 claim 1(e) requires "estimating a probability $P(u/d)$ that an unseen document d is of interest to the user u , wherein the probability $P(u/d)$ is estimated by applying the identified properties of the document to the learning machine having the parameters defined by the User Model." As shown in the above demonstrative, Dr. Pazzani takes the "Estimate Probability" box from Figure 2, colors it purple, and labels it as "1(e)." Having thus reduced claim 1(e) to the mere element "Estimate Probability," Dr. Pazzani opines that the accused systems meet claim 1(e) because they "estimate a probability." This is aptly illustrated by the cover demonstrative for Dr. Pazzani's opinions on 1(e):

Google Practices Claim 1(e): Estimating a Probability...



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What follows this Demonstrative is fifty-five other demonstratives. The full language of claim 1(e) is mentioned just once in these fifty-five demonstratives. By contrast, the words "estimate a probability" are mentioned over and over, as Dr. Pazzani compares the accused products to this language to show that the accused products "estimate a probability."

As discussed above, the centerpiece of his infringement opinion is his comparison of Google's accused products to the Figure 2 embodiment from the Asserted Patents' specification. He sometimes does this directly, as in Demonstratives 72-111. He sometimes does this more indirectly, as in his claim 1(e) demonstratives that reduce this element to the Figure 2 soundbite of "estimate probability" and assert that Google meets this stripped-down element. But whether done directly or indirectly, Dr. Pazzani's comparison of the accused products to Figure 2 is

improper. It is also highly prejudicial, as the jury may be misled into thinking that a "match" between the accused products and Figure 2 is sufficient for infringement. Accordingly, Google respectfully requests that all testimony comparing the accused products to Figure 2 be precluded.

Respectfully submitted,

OF COUNSEL:

POTTER ANDERSON & CORROON LLP

Charles K. Verhoeven
David A. Perlson
Antonio R. Sistos
Margaret Pirnie Kammerud
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
50 California St.
San Francisco, CA 94111
Tel.: (415) 875-6600

Joshua Lee Sohn
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
777 6th Street NW, 11th Floor
Washington, DC 20001-3706
Tel: (202) 538-8000

Andrea Pallios Roberts
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065
Tel.: (650) 801-5000

Dated: March 11, 2014

By: /s/ David E. Moore
Richard L. Horwitz (#2246)
David E. Moore (#3983)
Bindu A. Palapura (#5370)
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
rhoorwitz@potteranderson.com
dmoore@potteranderson.com
bpapura@potteranderson.com

Attorneys for Defendant Google Inc.

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on March 11, 2014, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on March 11, 2014, the attached document was Electronically Mailed to the following person(s):

Karen Jacobs Louden
Jeremy A. Tigan
Regina S.E. Murphy
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street, 18th Fl.
P.O. Box 1347
Wilmington, DE 19899-1347
klouden@mnat.com
jtigan@mnat.com
rmurphy@mnat.com

Jennifer D. Bennett
Dentons US LLP
1530 Page Mill Road, Ste. 200
Palo Alto, CA 94304-1125
jennifer.bennett@dentons.com

Andrew M. Grodin
Dentons US LLP
101 JFK Parkway
Short Hills, NJ 07078
andrew.grodin@dentons.com

Marc S. Friedman
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
marc.friedman@dentons.com

Mark C. Nelson
Richard D. Salgado
Steven M. Geiszler
Dentons US LLP
2000 McKinney, Suite 1900
Dallas, TX 75201
mark.nelson@dentons.com
richard.salgado@dentons.com
steven.geiszler@dentons.com

/s/ David E. Moore

Richard L. Horwitz

David E. Moore

Bindu A. Palapura

POTTER ANDERSON & CORROON LLP

(302) 984-6000

rhorwitz@potteranderson.com

dmoore@potteranderson.com

bpalapura@potteranderson.com